

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CHARLES ANTHONY BROOKS,
Petitioner,

No. C 16-01678 RS (PR)

ORDER OF DISMISSAL

v.

SAVAS JAMES LOUKEDIS,
Respondent.

This federal action was filed as a petition for writ of habeas corpus, that is, as a challenge to the lawfulness or duration of petitioner's incarceration. A review of the petition and the amended petition, however, shows that petitioner sets forth claims for damages against various persons on grounds that they violated his federal rights, rather than presenting challenges to the lawfulness or duration of his confinement. Therefore, if petitioner prevails here it will not affect the length of his incarceration. This means that his claim is not the proper subject of a habeas action, but must be brought as a civil rights case under 42 U.S.C. § 1983. *See Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (habeas corpus action proper mechanism for challenging "legality or duration" of confinement; civil rights action proper method for challenging conditions of confinement); *Crawford v. Bell*, 599 F.2d 890, 891–92

1 & n.1 (9th Cir. 1979) (affirming dismissal of habeas petition on basis that challenges to terms
2 and conditions of confinement must be brought in civil rights complaint).

3 In an appropriate case a habeas petition may be construed as a section 1983 complaint.
4 *Wilwording v. Swenson*, 404 U.S. 249, 251 (1971). Although the Court may construe a
5 habeas petition as a civil rights action, it is not required to do so. Since the time when the
6 *Wilwording* case was decided there have been significant changes in the law. For instance,
7 the filing fee for a habeas petition is five dollars; for civil rights cases, however, the fee is
8 now \$400¹ and under the Prisoner Litigation Reform Act the prisoner is required to pay it,
9 even if granted *in forma pauperis* status, by way of deductions from income to the prisoner's
10 trust account. *See* 28 U.S.C. § 1915(b). A prisoner who might be willing to file a habeas
11 petition for which he or she would not have to pay a filing fee might feel otherwise about a
12 civil rights complaint for which the \$400 fee would be deducted from income to his or her
13 prisoner account. Also, a civil rights complaint that is dismissed as malicious, frivolous, or
14 for failure to state a claim counts as a "strike" under 28 U.S.C. § 1915(g), which is not true
15 for habeas cases.

16 In view of these potential pitfalls for petitioner if the Court were to construe the
17 petition as a civil rights complaint, the case is DISMISSED without prejudice to petitioner
18 filing a civil rights action if he wishes to do so in light of the above. The Clerk shall enter
19 judgment in favor of respondents, and close the file.

20 **IT IS SO ORDERED.**

21 DATED: June 14, 2016


RICHARD SEEBORG
United States District Judge

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28 ¹ If granted IFP status, the total fee is \$350.